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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,292	06/01/2006	Maria Teresa Belmar	T7105(C)	3161

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EXAMINER
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SOROUGH, LAYLA

ART UNIT	PAPER NUMBER
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1627

NOTIFICATION DATE	DELIVERY MODE
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11/04/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/581,292	<b>Applicant(s)</b> BELMAR ET AL.	
	<b>Examiner</b> LAYLA SOROUGH	<b>Art Unit</b> 1627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The response filed June 18, 2009 presents remarks and arguments submitted to the office action mailed March 18, 2009 is acknowledged.

Applicant's arguments over the 35 U.S.C. 103(a) rejection of claims 1-9 over Farrell et al. (US 6,630,432) is not persuasive. Therefore, the rejection is herewith maintained.

Applicant's arguments over the 35 U.S.C. 103(a) rejection of claims 1-8, 10 and 11-13 over Crookham et al. (US 6,576,228) is not persuasive. Therefore, the rejection is herewith maintained.

Applicant's arguments over the 35 U.S.C. 103(a) rejection of claim 14 over Farrell et al. (US 6,630,432) as applied to claims 1-9, in view Honda (JP 07025741 A) is not persuasive. Therefore, the rejection is herewith maintained.

Applicant's arguments over the 35 U.S.C. 103(a) rejection of claims 15 and 16 over Farrell et al. (US 6,630,432) and Honda (JP 07025741 A), as applied to claims 1-9, 14, in view Saito et al. (US 2002/0132743) is not persuasive. Therefore, the rejection is herewith maintained.

Applicant's arguments over the 35 U.S.C. 103(a) rejection of claims 1-9 over Farrell et al. (US 6,630,432) is not persuasive. Therefore, the rejection is herewith maintained.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell et al. (US 6,630,432).

Farrell et al. teach soap bars comprising 7-20% of water; 40-95% of C<sub>12</sub>-C<sub>24</sub> fatty acid neutralized by an inorganic base such as NaOH (i.e. fatty acid soap); 0-15% of monoglyceride (e.g. glycerin monostearate or monolaurate); and 0-15% of free fatty acid. See Abstract; col. 2, lines 28-54; col. 3, lines 51-65; col. 4, lines 25-51. The soap bars of Farrell et al. contain additional functional ingredients such as alpha-hydroxy acid salts, which possess humectant properties. See col. 1, lines 15-22; col. 4, lines 6-22. The bars of Farrell et al. are hydrated with water to form a cleansing composition, which usually takes place at room temperature.

Farrell et al. do not teach the claimed concentration of the neutralized fatty acid or ratio of water. However, determination of optimal or workable concentration of the neutralized fatty acid by routine experimentation is obvious absent showing of criticality of the claimed concentration. One having ordinary skill in the art would have been motivated to do this to obtain the desired cleansing and lathering properties of the composition. Farrell et al. teaches at lower concentrations of free fatty acid make the material uncohesive or powder-like.

With respect to Claim 9, the bars of Farrell et al. are prepared by heating the ingredients until molten at about 80<sup>0</sup> C and then cooling, milling and extruding the resultant soap. See col. 3, lines 5-36. The reference does not explicitly teach the claimed cooling temperature of below 40<sup>0</sup> C. However, determination of optimal or workable cooling temperature by routine experimentation is obvious absent showing of criticality of the claimed parameter. One having ordinary skill in the art would have been motivated to do this to obtain the desired consistency of the composition suitable for further milling and extruding.

The reference does not explicitly teach the claimed ratio of the composition to the aqueous base. However, determination of optimal or workable ratio by routine experimentation is obvious absent showing of criticality of the claimed ratio. One having ordinary skill in the art would have been motivated to do this to obtain the desired cleansing and lathering properties of the composition.

Claims 1-8, 10 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crookham et al. (US 6,576,228).

Crookham et al. teach personal wash compositions in the form of bars which deposit high levels of sunscreens on the skin, such compositions containing 1-15% of water; 20-85% of a fatty acid soap and 0-15% of free fatty acid; 0-40% of glycerin monostearate; and other cosmetic additives. See Abstract; col. 3, lines 20-52; col. 5, lines 10-20; col. 8, lines 54-67; col. 9, lines 55-58; col. 10, lines 46-48. The bars of Crookham et al. are hydrated with water to form a wash composition, which usually takes place at room temperature.

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More specifically, the prior art teaches the same hydrating method as claimed to form a liquid wash, hence, a cream or lotion wash will be formed upon mixing an aqueous base at a temperature of below 80 degrees C. The surfactants include palmitic-stearic acid (col 13 table 1), which reads on claim 13.

Crookham et al. do not teach the claimed concentration of the neutralized fatty acid or the ratio of the composition to the aqueous base. However, determination of optimal or workable concentration of the neutralized fatty acid by routine experimentation is obvious absent showing of criticality of the claimed concentration. One having ordinary skill in the art would have been motivated to do this to obtain the desired cleansing and lathering properties of the composition

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell et al. (US 6,630,432), as applied to claims 1-9, in view Honda (JP 07025741 A).

Although, Farrell et al. teaches monoglycerides such as glyceryl monostearate the reference fails to teach a combination of glycerin monostearate and glycol monostearate.

Honda teaches a skin composition polyethylene glycol monostearate (2.00 wt.%), glycerin monostearate (5.00%), stearic acid (5.00%), behenyl alcohol (1.00%), glyceryl trioctate (10.00%), p-benzoic acid ester (0.20%), 1,3-butylene glycol (5.00%), disodium edetate (0.01%), kojic acid (1.00%), avocado extract (0.5%), millet extract (0.10), linseed oil (0.40%), almond oil (0.03%) and balance water.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Farell et al. with Honda to make a skin composition comprising both glycerin monostearate and glycol monostearate. The motivation comes from the teaching of Farell et al. that monoglycerides are used in making cosmetic compositions which are cohesive and high quality (col 3 lines 1-5) and (2) Honda wherein both glycerin monostearate and glycol monostearate in a topical skin composition. The skilled artisan would have reasonable expectation of successfully producing a similar composition with similar efficacy and results.

Claims 15 -17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell et al. (US 6,630,432) and Honda (JP 07025741 A), as applied to claims 1-9, 14, in view Saito et al. (US 2002/0132743).

Although, Farell et al. teaches neutralization of the fatty acids the reference fails to teach neutralization with potassium hydroxide.

Saito teaches a skin composition comprising fatty acids e.g. myristic, palmitic, and stearic acid that are neutralized with an aqueous solution of potassium hydroxide.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Farell et al. with Saito to make a skin composition comprising the neutralizing agent potassium hydroxide. The motivation comes from the teaching of Farell et al. that neutralizing agent are used in making cosmetic compositions and (2) Saito teaches a skin composition comprising fatty acid that are neutralized with an aqueous solution e.g.

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potassium hydroxide. The skilled artisan would have reasonable expectation of successfully producing a similar composition with similar efficacy and results.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

### ***Response to Arguments***

Applicant's arguments filed June 18, 2008 have been fully considered and are not persuasive.

Applicant's arguments with respect to the Farrell and Crookham rejections are all directed to the Declaration submitted on December 5, 2008. The Examiner respectfully reiterates: The Declaration does not commensurate in scope because the comparison has not been made with respect to the prior art relied upon. Unless comparison is made with disclosure identical (not similar) with that of the reference, affidavits or declarations comparing applicant's results with those of the prior art have no probative value.

Applicant submits that the use of lower amounts of the neutralized fatty acids provides surprising advantages of lather which could not have been predicted from the prior art. However, Applicant has not compared the Examples of the prior art relied upon with that of the claimed invention. With respect to the argument about the chain length of the carbon atoms of the fatty acids, the Examiner states the Examples of the prior art read on the claimed chain length of C14-22.



Additionally, with respect to the argument that the emulsifying agent/surfactant is limited to cetyl alcohol the examiner states the comprising language of the claim in the instant invention is open-ended and does not exclude additional, unrecited elements.

In response to applicant's argument that Saito fails to teach the fatty acids or lathering, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

The arguments are not persuasive and the rejection is made **FINAL**.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

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calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Conclusion***

No Claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Layla Soroush whose telephone number is (571)272-5008. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Shengjun Wang/

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Primary Examiner, Art Unit 1627